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IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

PHILLIP W. DUNN, Petitioner, **v.** **KEN CLARK, Warden,** Respondent.	08-0485 BTM (JMA) **APPLICATION FOR EXTENSION OF TIME TO FILE RESPONSE TO PETITION** The Honorable Jan M. Adler

Kevin R. Vienna declares:

I am the Deputy Attorney General assigned to prepare response in this matter. A motion to dismiss is due on June 4, 2008. An answer on the merits is due on June 19. I respectfully request that this Court grant an enlargement of time of approximately one month, to July 7, 2008 and July 21, 2008, for the reasons set forth below.

I normally work on cases in approximately the order in which courts have ordered a response. I should be able to begin work on the *Dunn* matter tomorrow. I expect to be able to complete my work within a few days.

Accordingly, I request this extension of time in which to file our motion to dismiss or answer.

A. Background

Petitioner Dunn is serving a sentence of thirteen years imprisonment following his conviction in San Diego County Superior Court in 2003 for burglary. His conviction followed the entry of a guilty plea.

Dunn did not appeal. Instead, beginning in 2007, he commenced a series of collateral attacks in the state courts by filing habeas corpus petitions. In those challenges, he complained that his sentence was improper because the trial court used the same prior conviction to impose a five-year enhancement for a serious felony prior and to bring Dunn within California's Three Strikes sentencing scheme.

On initial review, it appears that Dunn's claims are untimely, and I expect to file a motion to dismiss.

B. Counsel's Status

In about the last month, I have completed assignments in the following cases:

People v. Riggs	S043187 (capital argument)
Morgan v. Tilton,	07cv0284
Garcia v. Yates	07-0048 (DMS) LSP
Hite v. Evans	07-56078
Griggs v. Tilton	08cv0477 JAH (NLS)
Romero v. Curry	SACV 07-985
Tatarinov v. Superior Court of California	07cv2033

I typically work on cases in the order in which they are assigned to me. My next case, in order, is *Lohman v. Felker*, 07-0905, on which I have been granted one extension of time.

Although I usually work on one matter at a time, because I believe that the *Dunn* matter is on the lower level of complexity and because I believe I now have enough of the underlying state records to proceed, I will work on *Dunn* contemporaneously. I expect my briefing will take only a day or two, but additional time will be required for document production and duplication.

Additionally, I am on this office's habeas corpus team. That means my work is routinely interrupted by questions from other deputies regarding federal habeas corpus matters.

Granting of an enlargement of time will permit the response to be prepared without impairing quality and will afford adequate time to obtain and copy necessary records, for review and processing in this office, and for filing in this Court. Should this extension be granted, I will seek to complete the briefing based on the schedule described above, and I will not place this matter at any lower priority. All extension requests and progress are monitored by the senior assistant attorney general in charge of this office.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: June 4, 2008

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California

DANE R. GILLETTE
Chief Assistant Attorney General

GARY W. SCHONS
Senior Assistant Attorney General

s/Kevin Vienna
KEVIN VIENNA
Supervising Deputy Attorney General
Attorneys for Respondent

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CERTIFICATE OF SERVICE BY U.S. MAIL

Case Name: **Dunn v. Clark** No.: **08-0485 BTM (JMA)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On June 4, 2008, I served the following documents:

(1) APPLICATION FOR EXTENSION OF TIME TO FILE RESPONSE TO PETITION; and (2) ORDER GRANTING EXTENSION OF TIME

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Phillip W. Dunn
T-79951
California Substance Abuse Treatment Facility
P.O. Box 5248
Corcoran, CA 93212

Pro Se

Electronic Mail Notice List

I have caused the above-mentioned document(s) to be electronically served on the following person(s), who are currently on the list to receive e-mail notices for this case: None

Manual Notice List

The following are those who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing): **Phillip W. Dunn**, at the above-named address

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 4, 2008, at San Diego, California.

Bonnie Peak	Bonnie Peak
Declarant	Signature

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